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May 26, 2021

VIA ECF

The Honorable Ona T. Wang
United States Magistrate Judge
United States District Court for the Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl St.
New York, NY 10007-1312
Email: Wang_NYSDChambers@nysd.uscourts.gov

Re: *In re Application of Vale S.A., Vale Holdings B.V., and Vale International S.A. for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in Foreign Proceedings, No. 20-mc-199-JGK-OTW*

Dear Judge Wang:

In accordance with Sections III.D and IV of Your Honor's Individual Practices in Civil Cases, Petitioners Vale S.A., Vale Holdings B.V., and Vale International S.A. (collectively "Vale") submit this letter motion seeking permission to redact and to file certain documents under seal. Vale respectfully requests to redact the highlighted portions of, and file under seal, Vale's Letter Motion to Compel Document Production from Respondents Perfectus Real Estate Corp. and Tarpley Belnord Corp. ("Letter Motion to Compel") and Exhibits 4 through 6 ("Exhibits").

The Letter Motion to Compel and Exhibits rely upon and cite to documents that have been designated as confidential by Respondents Perfectus Real Estate Corp. and Tarpley Belnord

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Corp. (collectively, “Perfectus”) and by Respondent HFZ Capital Group on behalf of various HFZ entities and individuals (collectively, “HFZ”).¹

In ruling on a motion to seal, the Court must balance countervailing interests which include the right of public access to judicial documents and the privacy interest of the party resisting disclosure. *See Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 142 (2d Cir. 2016) (citing *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006)). Courts frequently find that a company’s interest in protecting proprietary or sensitive information outweighs the public’s interest in accessing such materials, and, as such, permit parties to file such materials under seal. *See, e.g., Lexington Furniture Industries, Inc. v. Lexington Co.*, 19-cv-6239 (PKC), 2021 WL 1143694, at *2 (S.D.N.Y. Mar. 24, 2021) (“The demonstration of a valid need to protect the confidentiality of such sensitive business information may be a legitimate basis to rebut the public’s presumption of access to judicial documents”); *Alexander Interactive, Inc. v. Adorama, Inc.*, 12 Civ. 6608 (PKC)(JCF), 2014 WL 4346174, at *2 (S.D.N.Y. Sept. 2, 2014) (allowing documents containing confidential information concerning the business relationship between defendant and a non-party entity to be filed under seal).

To facilitate the provision of confidential materials between Vale and Respondents in the above-captioned action, the parties entered into a protective order, which was filed and so-ordered by Your Honor on October 7, 2020, ECF No. 69 (“Protective Order”). Earlier this week, Vale sought permission of HFZ and Perfectus Respondents not to file the Exhibits under seal, but the Respondents declined to consent. Pursuant to the Protective Order, Vale is therefore required to file the Exhibits under seal and to redact portions of the Letter Motion to Compel that refer to information contained in those documents, and requests that unsealed materials be available only to Perfectus. We invite the HFZ and Perfectus Respondents to present any arguments they wish the Court to consider in favor of this sealing request.

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¹ The full list of HFZ entities and individuals is as follows: 20 West 40 Bryant Park Owner LLC, 215 Chrystie LLC, Chatsworth Realty 340 LLC, Chatsworth Realty Corp., Feldman Family 2007 Trust, Helene Feldman, Ziel Feldman, John Shannon, 76 Eleventh Avenue Property Owner LLC, HFZ 40 Broad Street LLC, HFZ 88 Lexington Avenue Owner LLC, HFZ 90 Lexington Avenue Owner LLC, HZ 235 West 75th Street Owner LLC, HFZ 301 West 53rd Street Owner LLC, HFZ 344 West 72nd Street Owner LLC, HFZ 501 West LLC, HFZ Bryant Park Owner LLC, HFZ Capital Group LLC, HFZ Highline LLC, HFZ Highline Property Owner LLC, HFZ Highline Retail Owner LLC, HZ KIK 30th Street LLC, HFZ KIK 30th Street Mezzanine LLC, HFZ KIK 30th Street Owner LLC, and HFZ West 30th Street Partners LLC.

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For the foregoing reasons, Vale respectfully requests that the Court permit Vale to file the above-referenced Exhibits under seal.

Thank you for Your Honor's consideration.

Respectfully submitted,

/s/ Jeffrey A. Rosenthal

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